

NAME

Stuart s. Pressly

PRISON NUMBER

V-48636

CURRENT ADDRESS OR PLACE OF CONFINEMENT

LSP-LAC Facility A1-223

P.O. Box 8457
CITY, STATE, ZIP CODE

Lancaster, CA 93539

2254	1983
FILING FEE PAID	
Yes	No
HFP MOTION FILED	
Yes	No
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Court	ProSe

ORIGINAL
FILED

DEC 17 2007

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *SM* DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Stuart S. Pressly

(FULL NAME OF PETITIONER)

PETITIONER

v.

F.B. Haws (warden)

(NAME OF WARDEN, SUPERINTENDENT, JAILOR, OR AUTHORIZED
PERSON HAVING CUSTODY OF PETITIONER (E.G., DIRECTOR OF THE
CALIFORNIA DEPARTMENT OF CORRECTIONS))

RESPONDENT

and

The Attorney General of the State of
California, Additional Respondent.

'07 CV 2364 JLS RBB

Civil No

(TO BE FILLED IN BY CLERK OF U.S. DISTRICT COURT)

PETITION FOR WRIT OF HABEAS CORPUS

UNDER 28 U.S.C. § 2254
BY A PERSON IN STATE CUSTODY

1. Name and location of the court that entered the judgment of conviction under attack:
In The Superior Court Of San Diego, Central Division, Dept 38
2. Date of judgment of conviction: April 23, 2005
3. Trial court case number of the judgment of conviction being challenged:
4. Length of sentence:
Sup. Ct # SCD 177809,
60 years to Life

5. Sentence start date and projected release date:
8/24/04 - 7/8/87
6. Offense(s) for which you were convicted or pleaded guilty (all counts):
P.C.S 211, P.C.S 12021
7. What was your plea? (CHECK ONE)
(a) Not guilty XXXXX
8. If you pleaded not guilty, what kind of trial did you have? (CHECK ONE)
(a) Jury
9. Did you testify at the trial?
No
- DIRECT APPEAL**
10. Did you appeal from the judgment of conviction in the California Court of Appeal?
Yes
11. If you appealed in the California Court of Appeal, answer the following:
- (a) Result: Judgment Affirmed
 - (b) Date of result (if known): Sept 28, 2006
 - (c) Case number and citation (if known): C.A. D046535
 - (d) Names of Judges participating in case (if known):
N/A
 - (e) Grounds raised on direct appeal:
 - 1, Trial Court Error by denying motion to suppress evidence.
 - 2, Insufficient evidence.
12. If you sought further direct review of the decision on appeal by the California Supreme Court (e.g., a Petition for Review), please answer the following:
- (a) Result: Review Denied
 - (b) Date of result (if known): Dec 13, 2006
 - (c) Case number and citation (if known):
S147860
 - (d) Grounds raised:
Review required on trial court error and insufficient evidence.

13. If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to that petition:

- (a) Result: N/A
- (b) Date of result (if known):
- (c) Case number and citation (if known):
- (d) Grounds raised:

COLLATERAL REVIEW IN STATE COURT

14. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Superior Court?

Yes ☒ X

15. If your answer to #14 was "Yes," give the following information:

- (a) California Superior Court Case Number (if known): Not known at this time.
- (b) Nature of proceeding:
Habeas Corpus Petition
- (c) Grounds raised:
 - 1, Ineffective Assistance Of Counsel.
 - 2, Prior Texas Burglary Conviction does not qualify as a strike
 - 3, Evidence Used at trial prejudicial.
- (d) Did you receive an evidentiary hearing on your petition, application or motion?
No
- (e) Result: Mailed to Superior Court Recently. (Waiting)
- (f) Date of result (if known):
N/A

16. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Court of Appeal?

No

17. If your answer to #16 was "Yes," give the following information:

(a) California Court of Appeal Case Number (if known):

(b) Nature of proceeding:

(c) Names of Judges participating in case (if known):

(d) Grounds raised:

(e) Did you receive an evidentiary hearing on your petition, application or motion?
Yes No

(f) Result:

(g) Date of result (if known):

18. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Supreme Court?
No

19. If your answer to #18 was "Yes," give the following information:

(a) California Supreme Court Case Number (if known):

(b) Nature of proceeding:

(c) Grounds raised:

(d) Did you receive an evidentiary hearing on your petition, application or motion?
Yes No

(e) Result:

(f) Date of result (if known):

20. If you did *not* file a petition, application or motion (e.g., a Petition for Review or a Petition for Writ of Habeas Corpus) with the California Supreme Court, containing the grounds raised in this federal Petition, explain briefly why you did not:

COLLATERAL REVIEW IN FEDERAL COURT

21. Is this your first federal petition for writ of habeas corpus challenging this conviction?
Yes ☐ (If "Yes" SKIP TO #22)
(a) If no, in what federal court was the prior action filed?
(i) What was the prior case number?
(ii) Was the prior action (CHECK ONE):
Denied on the merits? ☐
Dismissed for procedural reasons? ☐
(iii) Date of decision:
(b) Were any of the issues in this current petition also raised in the prior federal petition?
Yes ☐ No ☐
(c) If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this second or successive petition?
Yes ☐ No ☐

CAUTION:

- **Exhaustion of State Court Remedies:** In order to proceed in federal court you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. This means that even if you have exhausted some grounds by raising them before the California Supreme Court, you must first present *all* other grounds to the California Supreme Court before raising them in your federal Petition.
- **Single Petition:** If you fail to set forth all grounds in this Petition challenging a specific judgment, you may be barred from presenting additional grounds challenging the same judgment at a later date.
- **Factual Specificity:** You must state facts, not conclusions, in support of your grounds. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do. A rule of thumb to follow is — state who did exactly what to violate your federal constitutional rights at what time or place.

GROUND FOR RELIEF

22: State *concisely* every ground on which you claim that you are being held in violation of the constitution, law or treaties of the United States. Summarize *briefly* the facts supporting each ground. (e.g. what happened during the state proceedings that you contend resulted in a violation of the constitution, law or treaties of the United States.) If necessary, you may attach pages stating additional grounds and/or facts supporting each ground.

(a) **GROUND ONE:** Trial Court Erred and thereby violated Petitioner's Fourth Amendment right to be free from unreasonable searches and seizures by denying his motion to suppress evidence.

Supporting FACTS:

The trial court erred by denying petitioner's motion to suppress the evidence seized from the hotel room. The trial court's basis for the denial of this motion was that Ms. Rubin provided police valid consent to search a room she had litt. connection with. However, because Ms. Rubin neither had actual nor apparent authority to consent to the search of the room, the trial court erred and its denial of petitioner's motion to suppress should be reversed.

Violation of the 4th, 6th and 14th Amendments.

Did you raise GROUND ONE in the California Supreme Court?

Yes

If yes, answer the following:

- (1) Nature of proceeding (i.e., petition for review, habeas petition):
- (2) Petition for Review.
Case number or citation:
- (3) S147860
Result (attach a copy of the court's opinion or order if available):

See Exhibit A

- (b) **GROUND TWO:** The evidence was insufficient to find petitioner guilty of robbery and thus, the robbery conviction violated petitioners fourteenth amendment right to due process of law.

Supporting FACTS:

The evidence presented at trial was insufficient to convict petitioner because the evidence that the robbery was committed force or fear was lacking. Consequently, petitioner conviction must be reversed or reduced to the lesser-included offense of grand theft, which does not require the proof of the use of force or fear, because petitioner was deprived of his fourteenth Amendment right to the due process of law pursuant to the United States Constitution.

Did you raise GROUND TWO in the California Supreme Court?

Yes

If yes, answer the following:

- (1) Nature of proceeding (i.e., petition for review, habeas petition):
Petition for Review
- (2) Case number or citation:
S147860
- (3) Result (attach a copy of the court's opinion or order if available):
See Exhibit A

(c) **GROUND THREE:**

Supporting FACTS:

Did you raise GROUND THREE in the California Supreme Court?

Yes No.

If yes, answer the following:

- (1) Nature of proceeding (i.e., petition for review, habeas petition):
- (2) Case number or citation:
- (3) Result (attach a copy of the court's opinion or order if available):

(d) **GROUND FOUR:**

Supporting FACTS:

Did you raise GROUND FOUR in the California Supreme Court?

Yes No.

If yes, answer the following:

- (1) Nature of proceeding (i.e., petition for review, habeas petition):
- (2) Case number or citation:
- (3) Result (attach a copy of the court's opinion or order if available):

23. Do you have any petition or appeal now pending in any court, either state or federal, pertaining to the judgment under attack?

Yes

24. If your answer to #23 is "Yes," give the following information:

(a) Name of Court: Superior Court San Diego, Central Div. Dept 38

(b) Case Number: Have not recieved. Petition recently filed.

(c) Date action filed: N/A

(d) Nature of proceeding:

Habeas Corpus

(e) Name(s) of judges (if known): N/A

(f) Grounds raised:

1. Ineffective Assistance Of Counsel

2. Insufficient evidence used on prior out of state conviction.

3. Prejudicial evidence brought before jury.

4. Petitioner denied sixth amendment right to facts on prior out of state conviction. Jury Not Judge should have decided.

5. Prior Federal conviction counts as only one prior per Federal statues not five prior convictions.

(g) Did you receive an evidentiary hearing on your petition, application or motion?

No

25. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing

N/A

(b) At arraignment and plea

N/A

(c) At trial

Jane Kinsey Deputy Public Defender

(d) At sentencing 233 "A" Street 4th Floor, San Diego, Ca 92101

Jane Kinsey

(e) On appeal

Denise M. Rudasill

(f) In any post-conviction proceeding.

N/A

(g) On appeal from any adverse ruling in a post-conviction proceeding:

N/A

26. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

☒ Yes

27. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

☒ Yes

(a) If so, give name and location of court that imposed sentence to be served in the future:

Superior Court Los Angeles County, Van Nyes, Div 112

(b) Give date and length of the future sentence:

Date 7/26/04, 25 to life

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

☒ Yes

28. Consent to Magistrate Judge Jurisdiction

In order to insure the just, speedy and inexpensive determination of Section 2254 habeas cases filed in this district, the parties may waive their right to proceed before a district judge and consent to magistrate judge jurisdiction. Upon consent of all the parties under 28 U.S.C. § 636(c) to such jurisdiction, the magistrate judge will conduct all proceedings including the entry of final judgment. The parties are free to withhold consent without adverse substantive consequences.

The Court encourages parties to consent to a magistrate judge as it will likely result in an earlier resolution of this matter. If you request that a district judge be designated to decide dispositive matters, a magistrate judge will nevertheless hear and decide all non-dispositive matters and will hear and issue a recommendation to the district judge as to all dispositive matters.

You may consent to have a magistrate judge conduct any and all further proceedings in this case, including the entry of final judgment, by indicating your consent below.

Choose only one of the following:

Plaintiff consents to magistrate
judge jurisdiction as set forth

above.

OR

Plaintiff requests that a district judge
be designated to decide dispositive

matters and trial in this case.

29. Date you are mailing (or handing to a correctional officer) this Petition to this court:

December 11, 2007

Wherefore, Petitioner prays that the Court grant Petitioner relief to which he may be entitled in this proceeding.

SIGNATURE OF ATTORNEY (IF ANY)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

December 11 2007.

(DATE)



SIGNATURE OF PETITIONER

EXHIBIT

A

Court of Appeal, Fourth Appellate District, Div. 1 - No. D046535
S147860

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

STUART SCOTT PRESSLY, Defendant and Appellant.

Petition for review DENIED.

Stuart Pressly # V-48636
A1-223L

SUPREME COURT
FILED

DEC 13 2006

Frederick K. Ohlrich Clerk

DEPUTY

12-13-07 END

GEORGE,

Chief Justice

COUNTY OF LOS ANGELES)

SS:

(C.C.F., §446 & §2015.5; 28 U.S.C., §1746)

I, Stuart Pressly, declare under penalty of perjury that:

I am the Petitioner in the above-entitled action; I have read the foregoing documents and know the contents thereof, and the same is true of my own knowledge, except as to those matters stated therein upon information and belief, and as to those, I believe them to be true.

Executed this 11 day of December at California State Prison - Lancaster, California 93536-7620

Signature: 

(Declarant/Petitioner)

PROOF OF SERVICE

(C.C.F., §446 & §2015.5; 28 U.S.C., §1746)

I, Stuart S. Pressly, am a resident of California State Prison - in the County of Los Angeles, State of California. I am over the age of eighteen (18) and AM/AM NOT a party of the above-entitled action. My State Prison address is: 44750 60th Street West, Lancaster, California 93536-7620.

On Dec 11 2007

I served the following documents:

Petition Of Habeas CorpusMotion & Declaration to proceed In Forma Pauperis

(Set forth the exact title of document(s) served)

On the party(ies) herein by placing a true copy(ies) thereof, enclosed in sealed envelope(s), with postage thereon fully paid, or with a Trust Withdrawal Slip (CDC-190) attached thereof, in the United States Mail, in the manner provided by at the California State Prison, Lancaster, California 93536-7620, addressed as follows:

Clerk Of The United States District Court, Southern District
Of California
Room 4290
880 Front Street
San Diego, CA 92101-8900

There is delivery service by the United States mail at the place so addressed and/or there is regular communication by mail between the place of mailing and the place addressed. I declare under penalty of perjury that the foregoing is true and correct.

Dated: Dec 11 2007
Declarant/Petitioner

JS44

(Rev. 07/89)

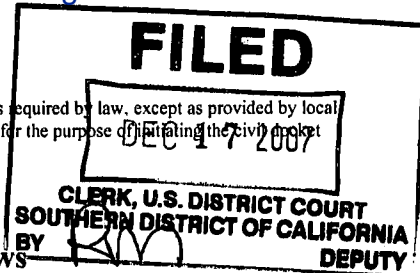
CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Stuart S. Pressly

F. B. Haws



(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Los Angeles PLACE OF FIRST LISTED DEFENDANT Los Angeles
(EXCEPT IN U.S. PLAINTIFF CASES)

FILED FOR PAID
Yes ☒ No ☒
BY MOTION FILED
Yes ☒ No ☒
COPIES SENT TO
Court ☒ **NOTE: IN CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND**

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Stuart S. Pressly
PO Box 8457
Lancaster, CA 93539
V-48636

ATTORNEYS (IF KNOWN)

'07 CV 2364 JLS RBB

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PT | DEF | | PT | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2254

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reappointment
<input type="checkbox"/> Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury-Medical Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	PERSONAL PROPERTY	<input type="checkbox"/> 640 RR & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395R)	<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 160 Stockholders Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 875 Customer Challenge 12 USC
<input type="checkbox"/> Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 710 Fair Labor Standards Act 29 Labor/Mgmt. Relations	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 892 Economic Stabilization Act
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 865 BSI (405(c))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 790 Other Labor Litigation	FEDERAL TAX SUITS	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input checked="" type="checkbox"/> 530 General	<input type="checkbox"/> 791 Empl. Ret. Inc.	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> Security Act	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Tort to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other			<input type="checkbox"/> 950 Constitutionality of State
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 550 Civil Rights			<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 290 All Other Real Property					

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.e.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

Docket Number

DATE 12/17/2007

SIGNATURE OF ATTORNEY OF RECORD

R. M. Haws